

Consent Guidance for Children We Care for Needing Surgery Including Dental Extraction – Revised and Updated January 2025

Introduction

The parental responsibility for Children We Care For (also known as Children in Our Care or Children Looked After) varies depending on the legal framework under which the child is in the care of the Local Authority. This can lead to confusion about who can consent and how consent can be given for surgery or any procedure involving a general anaesthetic.

Purpose of this guidance

Surgery has been delayed due to not being able to get informed consent from the person who has parental responsibility. The aim of this guidance is to prevent delays.

This guidance is for Local Authorities and Acute Hospital Trusts within Bath and North East Somerset, Swindon and Wiltshire Integrated Care Board (ICB). The guidance is to support clinicians, social workers, and social work managers to ensure that the right person gives informed consent at the right time for each individual child.

Definitions (legal framework Children Act 1989)

Children Looked After - A child is in our care 'looked after' (in care) if they are in the care of the local authority for more than 24 hours. Children can be in care by agreement with parents or by order of a Court. The exception to this is separated migrant children (SMC) who automatically become children we care for (looked after).

Section 20 Accommodated – children who are in the care of the local authority with the agreement of their parents. The parents have parental responsibility and would need to give informed consent to surgery and dental treatment.

Interim Care Orders s38 Children Act 1989 and Care Orders s31 Children Act 1989 – court orders that enable the local authority to share parental responsibility and consent for surgery with the parents. It is good practice for the parent/s with parental responsibility to consent and confirm this in writing. If this is not possible then the local authority can consent, this would normally be done by a Director of Children Services or a senior manager within Children Services (see below for local guidance).

Where ever possible and practical parents need to be fully involved with the arrangements for their child's treatment. Where there are safeguarding concerns, which require family time (contact) to be supervised arrange, this includes meeting with medical staff when surgery is planned (elective) arrangements need to be made for the parents should be supported to see the child in hospital including overnight if indicated.

Parental Responsibility

In England and Wales, all biological mothers automatically have Parental Responsibility over their children as soon as they are born. The following people also automatically have Parental Responsibility:

- A father if he was married to the mother at the time the child was born;
- An unmarried father if he jointly registered the birth or a father whose name appears on the birth certificate;
- A biological father could also get Parental Responsibility by subsequently marrying the biological mother, and also by obtaining a Child Arrangement Order stating that the child lives with them, as that will automatically grant the person with Parental Responsibility;
- Father can also seek an order to share parental responsibility;
- Special Guardianship Orders (SGOs) granted by the Court will also give parental responsibility to the adult who is given granted the special guardianship order;

- Same-sex partners, if they were civil partners or married at the time the child was born, or at the time of fertility treatment.

Parental responsibility can only be removed from a birth parent by an adoption order when parental responsibility is given to the adoptive parents by the Court.

Delegated Authority (Legal framework Children Act 1989 Guidance and Regulations - Volume 2 (2015))

This is given to foster carers and will set out what they can and can't consent for. Delegated authority is agreed between Children Services and those with parental responsibility and will be specific for each child. Delegated authority should be confirmed in writing. Some foster carers may be able to consent for medical treatment. In the event of an emergency foster carers would be expected to seek emergency treatment and not w delay whilst consent is addressed. During office hours the Foster Carer should contact the child's SW and outside of the this contact Emergency Duty Service (EDS)

Informed Consent

Permission granted in full knowledge of the possible consequences, typically that which is given by a patient to a doctor for treatment with knowledge of the possible risks and benefits. Giving consent for surgery should not be just signing the consent form. The person giving consent must understand the possible risks and benefits before they give consent.

Where parents seek the LA agreement for surgery for a child we care for and that is not clinically indicated e.g. a male circumcision on cultural or religious grounds. Further discussion should take place with a Corporate Director before a decision is made.

Processes

Process for a child's Social Worker who becomes aware that a child in our care needs surgery or a dental extraction

- 1) Social Worker to obtain the details of the surgical team and ensure that they know that the child is in our care , their legal status and who can give informed consent;
- 2) Social Worker to obtain the date of the planned operation;
- 3) Social Worker informs the appropriate senior manager;
- 4) Social Worker arranges for the person who can give informed consent to meet with the surgical team to give informed consent (See local guidance). This is normally done in person. A Virtual meeting may be acceptable, but this will depend on the surgical team's policy.

Local Authority Arrangements Local authority	Who can consent if parents not available	Contact details
Swindon	Kate Bohan Service Manager	kbohan@swindon.gov.uk